EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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| KRISTINA GRIMARD | ) | |
| | ) | Case: 2:07-cv-12128 |
| Plaintiff, | ) | Assigned To: |
| | ) | Hon. Robert H. Cleland |
| vs | ) | Referral Judge: |
| | ) | Steven R. Whalen |
| | ) | |
| PALMER, REIFLER AND ASSOCIATES, P.A. | ) | |
| | ) | |
| | ) | |
| Defendant. | ) | |

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**DEFENDANT'S MOTION FOR FEDERAL RULE OF CIVIL PROCEDURE RULE 11 SANCTIONS**

Defendant, PALMER, REIFLER AND ASSOCIATES, P.A., moves this Court for entry of an order awarding fees and costs to Defendant pursuant to Rule 11(c)(1)(A) of the Federal Rules of Civil Procedure and in support, states as follows:

1. On or about May 17, 2007, Plaintiff filed her Complaint alleging that Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692(d) *et. seq.*, the Michigan Collection Practices Act, MCLA § 445.252(a) *et. seq.* and the Michigan Occupational Code, M.C.L. § 339.915.

2. Plaintiff is represented by Brian P. Parker, Esq., of the Law Offices of Brian C. Parker, P.C.

3. Defendant has filed a Motion to Dismiss and/or for Summary Judgment as a first responsive pleading, in which it seeks this Court to dismiss this action for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted under the FDCPA, the MCPA and the Michigan Occupational Code.

4. Pursuant to Rule 11(b)(2) and (3), by filing this action, Plaintiff's attorney was certifying to the best of his

> knowledge, information and belief, formed after an inquiry reasonable under the circumstances, . . .
> (2) the claims, defenses and other legal contentions therein are warranted by existing law . . .
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

5. Pursuant to Rule 11(c) of the Federal Rules of Civil Procedure, attorney's fees may be awarded against party or its counsel and law firm if the following conditions are met:

> If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.
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> If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

6. Plaintiff initiated this cause of action despite a complete absence of a justiciable law or fact that would entitle the Plaintiff to relief under the Complaint as pled. Therefore, it is asserted that the conditions set forth in Rule 11(c) as set out in paragraph seven above have been met.

7. Upon receipt of the Complaint, Defendant immediately notified Plaintiff's counsel of the status of the law as it applied to the instant facts by correspondence dated May 31, 2007. A copy of the correspondence is attached as Exhibit "A."

8. After being placed on notice by Exhibit "A", Plaintiff's counsel failed to agree to dismiss the action, continued to pursue the frivolous action, and failed to respond to any of Defendant's four voice mails left between the dates of May 31, 2007 and June 15, 2007 asking for a return call to discuss the matter.

9. The case at bar is devoid of any fact or law supporting Plaintiff's claim and the claim has either been brought or maintained despite knowledge of statutory law and case law demonstrating the absence of legal support for such claim.

10. As a result of Plaintiff's continued prosecution of this case, Defendant was forced to retain Michigan counsel and has incurred reasonable costs and attorney's fees in defense of this action.

## RELIEF

WHEREFORE, Palmer, Reifler and Associates, P.A., respectfully requests this Court enter an order awarding attorney's fees and costs incurred in this action in favor of Defendant and against Plaintiff and Plaintiff's and any other relief this Court deems just.

PLUNKETT COONEY

s/ Michael P. Ashcraft, Jr

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Dated: July 3, 2007

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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|---|---|---|
| KRISTINA GRIMARD<br><br>Plaintiff,<br><br>vs<br><br>PALMER, REIFLER AND ASSOCIATES, P.A.<br><br>Defendant. | ) | Case: 2:07-cv-12128<br>Assigned To:<br>Hon. Robert H. Cleland<br>Referral Judge:<br>Steven R. Whalen |

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|---|---|
| Brian P. Parker, P.C. (P 48617)<br>Law Offices of Brian P. Parker, P.C.<br>Attorney for Plaintiff<br>30700 Telegraph Rd., Suite 1580<br>Bingham Farms, MI 48025<br>(248) 642-6268<br>(248) 642-8875 (FAX) | Michael P. Ashcraft, Jr. (P46154)<br>Plunkett & Cooney, P.C.<br>Attorney for Palmer, Reifler and Associates, PA<br>38505 Woodward Ave., Ste. 2000<br>Bloomfield Hills, MI 48304<br>(248) 594-8217 |

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**DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR FEDERAL RULE OF CIVIL PROCEDURE RULE 11 SANCTIONS**

Defendant, PALMER, REIFLER AND ASSOCIATES, P.A., relies on the Federal Rules of Civil Procedure and this Honorable Court's discretion in support of this Motion.

PLUNKETT COONEY

s/ Michael P. Ashcraft, Jr

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Dated: July 3, 2007

EASTERN DISTRICT OF MICHIGAN
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| KRISTINA GRIMARD<br><br>Plaintiff,<br><br>vs<br><br>PALMER, REIFLER AND ASSOCIATES, P.A.<br><br>Defendant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case: 2:07-cv-12128<br>Assigned To:<br>Hon. Robert H. Cleland<br>Referral Judge:<br>Steven R. Whalen |

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## CERTIFICATE OF SERVICE

Jeffrey S. Hengeveld, attorney with the law firm of PLUNKETT COONEY, being first duly sworn, deposes and says that on the 3rd day of July, 2007, he caused a copy of this document to be served upon all parties of record, and that such service was made electronically upon each counsel of record so registered with the United States District Court.

By: s/Jeffrey S. Hengeveld
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